

HOUSE BILL NO. 824

INTRODUCED BY P. INGRAHAM

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4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A CERTAIN AMOUNT OF MILITARY PENSION OR  
5 AND RETIREMENT INCOME AND SURVIVOR BENEFITS FROM INCOME TAXATION; AMENDING SECTIONS  
6 15-30-111, 15-62-207, AND 15-62-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A  
7 RETROACTIVE APPLICABILITY DATE."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 15-30-111, MCA, is amended to read:

12 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal adjusted gross  
13 income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the  
14 following:

15 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other  
16 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana  
17 under federal law;

18 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
19 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

20 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a  
21 reduction of Montana income tax liability;

22 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue  
23 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

24 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

25 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the  
26 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

27 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of  
28 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution  
29 of the same estate or trust for the same tax period; and

30 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after



1 December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted  
2 gross income.

3 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not  
4 include the following, which are exempt from taxation under this chapter:

5 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a  
6 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt  
7 from taxation by Montana under federal law;

8 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.  
9 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

10 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including  
11 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

12 (c) (i) except as provided in ~~subsection~~ subsections (2)(c)(ii) and (2)(c)(iii), the first \$3,600 of all pension  
13 and annuity income received as defined in 15-30-101;

14 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

15 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total  
16 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in  
17 excess of \$30,000 as shown on the taxpayer's return;

18 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity  
19 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in  
20 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000  
21 as shown on their joint return;

22 (iii) (A) THE FIRST \$15,000 OF all military pension ~~or~~ AND OTHER MILITARY retirement income received by  
23 a retired member of the uniformed services of the United States, as defined in 10 U.S.C. 101, who has been  
24 honorably discharged from uniformed service; or

25 (B) THE FIRST \$15,000 OF all income received as survivor benefits under Title 10, chapter 73, of the  
26 United States Code, provided that the retired member was honorably discharged from uniformed service;

27 (d) all Montana income tax refunds or tax refund credits;

28 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

29 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section  
30 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January

1 1, 1983, received by ~~persons~~ a person for rendering services ~~rendered by them~~ to patrons of premises licensed  
2 to provide food, beverage, or lodging;

3 (g) all benefits received under the workers' compensation laws;

4 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the  
5 employee under federal law;

6 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a  
7 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

8 (j) principal and income in a medical care savings account established in accordance with 15-61-201  
9 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a  
10 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

11 (k) principal and income in a first-time home buyer savings account established in accordance with  
12 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase  
13 of a single-family residence;

14 (l) contributions withdrawn from a family education savings account or earnings withdrawn from a family  
15 education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated  
16 beneficiary;

17 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the  
18 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

19 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of  
20 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution  
21 of the same estate or trust for the same tax period;

22 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch  
23 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction  
24 is not provided for federal income tax purposes;

25 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant  
26 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and  
27 taxpayer meet the filing requirements in 15-30-142.

28 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or  
29 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

30 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero.

1 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall  
2 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as  
3 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election  
4 is effective.

5 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business  
6 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and  
7 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and  
8 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries  
9 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must  
10 be made to determine the amount of income or loss of the partnership or small business corporation.

11 (5) Married taxpayers filing a joint federal return who are required to include part of their social security  
12 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal  
13 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement  
14 benefits when they file separate Montana income tax returns. The federal base must be split equally on the  
15 Montana return.

16 (6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end  
17 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income  
18 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is  
19 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the  
20 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the  
21 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the  
22 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted  
23 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage  
24 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting  
25 or expected to last at least 12 months.

26 ~~(7) Married taxpayers who file a joint federal return and who make an election on the federal return to~~  
27 ~~defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA,~~  
28 ~~pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana~~  
29 ~~income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same~~  
30 ~~time period. The deferred amount must be attributed to the taxpayer making the conversion.~~

1           ~~(8)~~(7) An individual who contributes to one or more accounts established under the Montana family  
 2 education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the  
 3 contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for  
 4 the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made  
 5 by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection  
 6 applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is  
 7 the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a  
 8 Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions  
 9 that reduced adjusted gross income.

10           ~~(9)~~(8) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection  
 11 ~~(9)(a)(iv)~~ (8)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

- 12           (i) is a health care professional licensed in Montana as provided in Title 37;
- 13           (ii) is serving a significant portion of a designated geographic area, special population, or facility  
 14 population in a federally designated health professional shortage area, a medically underserved area or  
 15 population, or a federal nursing shortage county as determined by the secretary of health and human services  
 16 or by the governor;
- 17           (iii) has had a student loan incurred as a result of health-related education; and
- 18           (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment  
 19 program described in subsection ~~(9)(b)~~ (8)(b) as an incentive to practice in Montana.

20           (b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a loan repayment program includes a federal, state, or  
 21 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as  
 22 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility  
 23 as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch.  
 24 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

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26           **Section 2.** Section 15-62-207, MCA, is amended to read:

27           "**15-62-207. Deductions for contributions.** An individual who contributes to one or more accounts in  
 28 a tax year is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111~~(8)~~(7), by the  
 29 total amount of the contributions, but not more than \$3,000. The contribution must be made to an account owned  
 30 by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or

1 stepchild is a Montana resident."  
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3 **Section 3.** Section 15-62-208, MCA, is amended to read:

4 **"15-62-208. Tax on certain withdrawals of deductible contributions.** (1) There is a recapture tax at  
5 a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts that  
6 reduced adjusted gross income under 15-30-111~~(6)~~(7).

7 (2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross  
8 income, all withdrawals must be allocated between income and contributions in accordance with the principles  
9 applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion  
10 of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions,  
11 if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions  
12 that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must  
13 be treated as first derived from contributions that reduced adjusted gross income, to the extent of the  
14 contributions, and then to contributions that did not reduce adjusted gross income.

15 (3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the  
16 withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account  
17 owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income  
18 tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the  
19 account owner is not a Montana resident at the time of the withdrawal.

20 (b) The department may require withholding on recapturable withdrawals from an account that was at  
21 one time owned by a Montana resident if the account owner is not a Montana resident at the time of the  
22 withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time  
23 owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

24 (4) For the purposes of this section, all contributions made to accounts by residents of Montana are  
25 presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that  
26 all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for  
27 contributions shall report on their Montana income tax returns the amount of deductible contributions made to  
28 accounts for each designated beneficiary and the social security number of each designated beneficiary.

29 (5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a  
30 nonqualified withdrawal or a withdrawal or distribution from an account that was opened ~~after the later of:~~

1 ~~\_\_\_\_\_ (a) April 30, 2001; or~~

2 ~~\_\_\_\_\_ (b) the date that is 3 years prior to the date of the withdrawal or distribution.~~

3 (6) The department shall use all means available for the administration and enforcement of income tax  
4 laws in the administration and enforcement of this section."

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6 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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8 NEW SECTION. **Section 5. Retroactive applicability.** [This act] applies retroactively, within the  
9 meaning of 1-2-109, to military retirement or pension income or survivor benefits received after December 31,  
10 2006.

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- END -